

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA

v.

CRISTIAN JIMENEZ,

Petitioner.

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C.A. No. 13-153 S

ORDER

WILLIAM E. SMITH, Chief Judge.

Before the Court are two motions filed by Petitioner pursuant to 28 U.S.C. § 2255. Petitioner was originally sentenced to serve a 90-month term of incarceration for his heroin distribution convictions. His first § 2255 motion was denied on July 10, 2014. His motion to reduce his sentence pursuant to 18 U.S.C. § 3582(c)(2) was granted in March 2015; the Court reduced Petitioner's term of incarceration by three months based on a 2014 amendment to the sentencing guidelines. Thereafter, Petitioner filed the two pending § 2255 motions.

"A federal prisoner seeking to file a second or successive § 2255 petition must first obtain authorization from the court of appeals to do so."¹ The court of appeals may only authorize a second or successive petition when it is "based either on (1) newly discovered evidence that would establish innocence or (2) a

¹ Bucci v. United States, 809 F.3d 23, 25 (1st Cir. 2015), cert. denied, 137 S. Ct. 211 (2016) (citing 28 U.S.C. § 2255(h)).

new rule of constitutional law made retroactive on collateral review by the Supreme Court.”² The First Circuit has “interpreted this provision as stripping the district court of jurisdiction over a second or successive habeas petition unless and until the court of appeals has decreed that it may go forward.”³ Petitioner’s § 2255 motions (ECF Nos. 34, 39) are therefore DENIED.

RULING ON CERTIFICATE OF APPEALABILITY

Pursuant to Rule 11(a) of the Rules Governing Section 2255 Proceedings in the United States District Courts, this Court hereby finds that this case is not appropriate for the issuance of a certificate of appealability (COA) because Petitioner has failed to make “a substantial showing of the denial of a constitutional right” as to any claim, as required by 28 U.S.C. § 2253(c)(2).

Petitioner is advised that, also pursuant to Rule 11(a), any motion to reconsider this ruling will not extend the time to file a notice of appeal in this matter.

IT IS SO ORDERED.



William E. Smith
Chief Judge
Date: April 12, 2017

² Id. at 26 (citing 28 U.S.C. § 2255(h)).

³ Id. (internal citation omitted).